

Message Text

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ACTION OPIC-06

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FM AMEMBASSY SAN SALVADOR

TO SECSTATE WASHDC 8161

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E.O. 11652: N/A

TAGS: EINV; ES

SUBJECT: OPIC BILATERAL

REF: A) STATE 111236; B) SAN SALVADOR 1893

1. ACTING FOREIGN MINISTER DR. CASTANEDA, DURING DISCUSSION MAY 21, SUGGESTED THAT ECONOFF MEET WITH DR. MAURICIO GRANILLO, LAWYER AND RECENTLY APPOINTED SUB-DIRECTOR OF AMERICAN AFFAIRS IN THE MINISTRY, WHO IS HANDLING THE PROPOSED OPIC BILATERAL. DURING THIS MEETING, MAY 22, GRANILLO REVEALED THE CONTINUING RESISTANCE OF THE TECHNICAL STAFF OF THE LEGISLATIVE ASSEMBLY TO THE BILATERAL. POINTS OF CONCERN MENTIONED ARE: 1) THAT DESPITE THE EXPLANATION OF SUBROGATION PROVIDED BY OPIC (STATE 049672) IT IS BELIEVED THAT SINCE OPIC IS A USG ENTITY IT WILL OBTAIN AND UTILIZE BY RIGHTS OF THE BILATERAL DIPLOMATIC ACCESS IN PRESSING ITS CLAIMS, RIGHTS WHICH ARE PROHIBITED BY ARTICLE 19 AND 20 OF THE SALVADORAN CONSTITUTION; 2) THAT BY THEIR NATURE THE PRESENT AND PROPOSED BILATERAL GIVE PREFERENCE TO U.S. PRIVATE INVESTORS VIS A VIS THOSE OF THIRD COUNTRIES; AND 3) THAT REFERENCE BY INFERENCE TO ACTS OF CONFISCATION (WE ASSUME WITH REFERENCE TO ART. 6(B)) FLIES IN FACE OF CONSTITUTION WHICH PROHIBITS CONFISCATION (ART. 138).T

2. ECONOFF ENGAGED GRANILLO IN LOW-KEY DISCUSSION OF THESE CONCERNS, SUGGESTING DIFFERING INTERPRETATIONS AND RESURRECTING SOME OF POINTS USED BY OPIC'S FREEMAN AND GILBERT IN JANUARY VISIT AT MINISTRY. ECONOFF OFFERED TO CONVEY POINTS OF CONCERN

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TO OPIC WITH REQUEST FOR COMMENT AND TO CONVEY, SHOULD FOREIGN

OFFICE DESIRE, AN INVITATION FOR AN OPIC LAWYER TO VISIT IN THE MOURSE OF OTHER TRAVEL IN THE AREA. GRANILLO DEMURRED ON THESE T SUGGESTIONS AND SAID THE CONTEMPLATED COURSE OF ACTION IS A MINISTRY TO EMBASSY NOTE PROPOSING ALTERNATIVE LANGUAGE IN THE BILATERAL ALONG WITH OBSERVATIONS ON WHY THE LANGUAGE OF THE OPIC PROPOSAL PRESENTED PROBLEMS. HE SAID WE COULD EXPECT RECEIPT OF THIS IN ABOUT TWO WEEKS (I.E. JUNE 5).

3. DR. CASTANEDA, IN THE MAY 21 CONVERSATION, SAID THE LEGISLATIVE ASSEMBLY HAD CONCERNS ABOUT THE CONSTITUTIONALITY OF THE 1960 BILATERAL. GRANILLO WAS ASKED CONCERNING THIS AND SAID HE DID NOT FORESEE THE POSSIBILITY OF ANY GOES INITIATIVE TO RESCIND THE 1960 AGREEMENT. FURTHERMORE, CONTACTS AT THE LEGISLATIVE ASSEMBLY TO DATE HAVE BEEN ONLY WITH THE STAFF. HE CONFIRMED THAT THE APPROPRIATE GOES MINISTRIES HAD CLEARED ON THE SUBMISSION OF THE BILATERAL TO THE ASSEMBLY.

4. COMMENT: WHILE WE HAVE PERFORMED AS APOLIGISTS FOR OPIC TO THE FOREIGN MINISTRY ON THE BILATERAL, PERMIT US AS NON-LAWYERS TO MAKE SEVERAL OBSERVATIONS WHICH MAY BE, IN PART, WHAT ARE NAGGING THE ASSEMBLY'S LEGAL STAFF. THE OPIC MEMORANDUM ON SUBROGATION, TRANSMITTED TO THE MINISTRY IN MARCH, DOES NOT MENTION THE USG. IT PORTRAYS OPIC AS JUST ANOTHER INSURANCE COMPANY WHICH WOULD WISH THE RIGHT OF SUBROGATION. ACCEPTING THIS ON ITS FACE AND LEAVING ASIDE THE FACT THAT OPIC IS A PUBLIC ENTITY, THE ARGUMENT MIGHT BE WON. BUT ARTICLE THREE (3) PAR. ONE (1) OF THE 1960 AGREEMENT APPEARS CLEAR THAT THE SUBROGATION IS TO THE USG. THEN, BOTH THE 1960 BILATERAL AND ART. 5 OF THE PROPOSED BILATERAL REQUIRE GOVERNMENT TO GOVERNAMENT NEGOTIATION IN THE CASE OF CONFLICT AND, FAILING THAT, ARBITRATION AND USE OF THE ICJ, PROCEDURES WHICH WOULD APPEAR TO CONFLICT WITH THE SALVADORAN CONSTITUTION.

5. THE EMBASSY WILL CONVEY TO OPIC THE CONTENTS OF THE ANTICIPATED FOREIGN MINISTRY COMMUNICATION CONCERNING THE BILATERAL AS SOON AS IT IS RECEIVED.
CAMPBELL

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